IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2007

CORAM

THE HONOURABLE MR. JUSTICE S. PALANIVELU

Crl.O.P.No.25888 of 2007
and M.P.No.1 and 2 of 2007

S. Kalayarasan ... Petitioner

Vs

The State rep. by
The Inspector of Police,
Singarapettai. ... Respondent

Criminal Original Petition filed under section 482 of Cr.P.C. to call for the records in C.C.No.124 of 2005 on the file of the learned District Munsif/Judicial Magistrate, Uthangarai and quash the same in so far as the petitioner is concerned.

For Petitionerd : Mr.R. Shanmugam
Senior Counsel for
Mr. R. Gopinath

For Respondents : Mr.A. Saravanan,
Government Advocate (Crl.Side)

O R D E R

A case has been registered against the petitioner and three other persons in Cr.No.92 of 2004 for the offences punishable under Sections 304 (A), 338, 337 r/w 109 and 34 of I.P.C. by the respondent police. The first accused in the case was a contractor, who has taken contract for construction of a a ground level water tank in the Arunthathiyar Colony in Mittapatti Village in which the petitioner/second accused is an engineer, was assigned duty to supervise the day to day construction work. The third accused is the Extension Officer, fourth accused is the Block Development Officer. On 13.3.2004, the water tank busted causing death of two persons, grievous hurt to four persons besides simple injuries to 11 persons.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. Learned Senior Counsel appearing for the petitioner streneously argued that the case registered against second accused/petitioner herein is not at all maintainable and the petitioner is falsely implicated in this case. He further submitted that the provision of law has been misquoted with regard to the petitioner.

3. Learned Senior Counsel appearing for the petitioner draws attention of this court to the order of this Court in Crl.O.P.No.23653 of 2006 dated 19.1.2007 in which the proceedings against the third and fourth accused of this case have been quashed. He also pleaded on the strength of the decision of learned single Judge of this Court reported in 2007 (4) CTC 318 [Karunakar, Capt.D. v. Tamil Nadu News Print & Papers Ltd.,] wherein the following observations have been made:

> "15. Mr.N. Sudharshan, learned counsel also placed reliance on a decision of this Court in V. Karthikeyan and another v. The Registrar of Companies, etc., 2001 (2) LW (Crl.) 656 tothe effectthat benefit should be extended to the similarly placed other accused though they have not preferred any Petitions for quashing. This Court in that decision after allowing the quashing Petition held as follows:
>
> "31. Under the circumstance, the entire proceedings in pursuance of the wrong cognizance taken in E.O.C.C. No.177 of 1998 on the file of the Additional Chief Metropoltan Magistrate, E.O.I, Egmore, are liable to be quashed not only as against the petitioners but also as against all the other accused though they are not the petitioners herein."
> In this case also, apart from the petitioners herein, the other accused viz., A-3, A-9 and A-10 also stand on a similar footing like the petitioners herein and therefore, the proceedings initiated against them is also liable to be quashed.

No doubt the co-accused in this case got the benefit of having quashed the proceedings against them in the above said Cr.No.

4. Going by the observation contained in the above said Order of this Court in Crl.O.P.No.23653 of 2006, it is seen as follows:

> "by no stretch of imagination it can be stated that the petitioners who have been arrayed as A-3 and A-4 are responsible for any rash and negligent act resulting the burst or ground level water tank causing the death of two persons and causing injuries to 15 persons."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. It is further found as follows:

"3. The learned Senior counsel pointed out that in the complaint given by one of the victims, there is no implication of the petitioners at all. It is also pointed out by the learned Senior counsel that the Block Development Officer, who succeeded the second petitioner has categorically stated in his statement recorded by the police under Section 161 Cr.P.C. to the effect that only A-1 and A-2 are the persons solely responsible for the irregular construction and acting in a negligent manner while constructing the ground level water tank which resulted in the occurrence and the Block Development Officer has not whispered a word about these petitioners. The leanred Senior Counsel further pointed out that there is absolutely no materials available on record through the statements recorded from the witnesses implicating the accused for the alleged offence under Sections 304-A, 338, 337 r/w 109 and 34 I.P.C."

6. As far as A3 and A4 are concerned they are not at all directly involved and only they were present to see the mixing of cement and sand of construction work. Whereas A1 and A2 are directly responsible for the said process, which forms basis for the cause of action. It is needless to mention that the second accused who is the petitioner herein is a qualified engineer who was chosen by the first accused to supervise the above said process of construction and he has accepted to apply his mind in the above said process in order to ensure the safety of the persons working in and the persons who will get benefit in future by the said scheme. There is no ground made out to show that the petitioner is not at all responsible for the above said instance. Hence the contention of the learned Senior counsel for the petitioner could not be accepted.

7. As far this petitioner with regard to consequences which the police have registered in the F.I.R., the petitioner can

S. PALANIVELU,J.

ggs

freely agitate it before the trial court before framing charges against him. It is the contention of the learned Senior Counsel for the petitioner that he could in no way be brought under section 34 of I.P.C. I could not find anything supportive to the petitioner so as to order for quashing of the complaint and there is no abuse of process of the Court with regard to the role played by the petitioner herein.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. In the above circumstance, the petition is liable for dismissal. Accordingly the petition is dismissed. Consequently connected M.Ps. are dismissed.

ggs

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Inspector of Police,
   Singarapettai.

2. The Public Prosecutor,
   High Court, Madras.

KK(CO)
dcp/17.9

Crl.O.P.No.25888 of 2007
and M.P.No.1 and 2 of 2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/